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In re Application of :
McCAUSLAND *et al* :
U.S. Application No.: 10/591,795 :
PCT No.: PCT/GB2005/00812 :
Int. Filing Date: 03 March 2005 :
Priority Date: 06 March 2004 :
Attorney Docket No.: McCAUSLAND-15819 :
For: REMOVAL OF SODIUM OXALATE :
FROM A BAYER LIQUOR :

DECISION

This decision is in response to applicants' petition under 37 CFR 1.47(a) filed 12 October 2007.

BACKGROUND

On 10 May 2007, the Office mailed a Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US) (Form PCT/DO/EO/905) indicating that an oath or declaration and the surcharge fee were required. Applicants were given two months to respond with extensions of time available.

On 12 October 2007, applicants filed the subject response which was accompanied by, *inter alia*, a three-month extension and fee; a declaration signed by one of the two joint inventors on behalf of the nonsigning inventor; a surcharge fee; a petition fee; and a copy of a letter dated 20 March 2007.

DISCUSSION

Applicants claim that co-inventor, Linda McCausland refuses to cooperate and have filed the subject petition under 37 CFR 1.47(a).

A petition under 37 CFR 1.47(a) requires: (1) the petition fee; (2) factual proof that the nonsigning joint inventor cannot be located or refuse to cooperate; (3) a statement of the last known address of the nonsigning joint inventor; (4) and an oath or declaration executed by the signing joint inventor on their behalf and on behalf of the nonsigning joint inventor. Items (1), (3) and (4) are satisfied in the petition.

Applicants submitted a \$200.00 petition fee. The declaration lists the last known

10/591,795

address of the nonsigning inventor. An executed declaration signed by one of the two named inventors was submitted. This declaration meets the requirements of section 409.03(a) of the MPEP and complies with 37 CFR 1.497(a) and (b).

Regarding item (2), the 37 CFR 1.47(a) applicants have submitted a letter from Peter Mansfield, a Chartered Patent Attorney in the U.K. who claims that the nonsigning inventor's actions demonstrate that she is not cooperating in the subject application.

Section 409.03(d) II of the MPEP requires that when the 37 CFR 1.47 applicants conclude that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be provided in a statement of facts. Here, the 37 CFR 1.47(a) applicants have not provided a statement of facts as required. The letter by Mr. Mansfield is not sufficient for this purpose. Moreover, the 37 CFR 1.47(a) applicants must also show that a complete copy of the application, including specification, claims and drawings was presented to the nonsigning inventor for a refusal to be accepted. In the petition, the 37 CFR 1.47(a) applicants have not provided any documentary evidence that a complete copy of the application was forwarded and received by Ms. McCausland. Petitioners must make such a showing for a refusal to be accepted.

For these reasons, item (2) of 37 CFR 1.47(a) is not yet complete.

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are available.

Any further correspondence with respect to this matter may be filed electronically via the USPTO EFS-Web, by facsimile to (571) 273-0459, or if mailed addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450.



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